

Message Text

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TO AMEMBASSY SOFIA PRIORITY

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E.O. 11652:GDS

TAGS: CGEN, CPAS, SHUM, PFOR, BU, US

SUBJECT: GOB INTERPRETATION OF EXCHANGE OF LETTERS
APPENDED TO US-GOB CONSULAR CONVENTION AND 1923
NATURALIZATION TREATY

REF: SOFIA 524

1. DEPARTMENT LEGAL ADVISOR'S OFFICE HAS RESPONDED TO
EMBASSY'S REQUEST (REFTEL) FOR EVALUATION OF GOB LEGAL
POSITION THAT NATURALIZATION TREATY OF 1923 IS "SUPERSEDED"
BY EXCHANGE OF LETTERS APPENDED TO US-BULGARIAN CONSULAR
CONVENTION OF 1974. TEXT OF LEGAL ADVISOR'S OFFICE REPORT
FOLLOWS.

2. BEGIN TEXT: THE BULGARIAN GOVERNMENT'S ARGUMENT
INVOLVES THE FOLLOWING TEXTS:
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ARTICLE 1, PARAGRAPH 2 OF THE NATURALIZATION TREATY WHICH
PROVIDES THAT "NATIONALS OF BULGARIA WHO HAVE BEEN OR SHALL
BE NATURALIZED IN TERRITORY OF THE UNITED STATES SHALL
BE HELD BY BULGARIA TO HAVE LOST THEIR ORIGINAL NATIONALITY
AND TO BE NATIONALS OF THE UNITED STATES"; THE CONSULAR
CONVENTION WHICH PROVIDES THAT "A PERSON ENTERING THE

PEOPLE'S REPUBLIC OF BULGARIA FOR A TEMPORARY VISIT WITH AN

AMERICAN PASSPORT WHICH CONTAINS A VALID BULGARIAN ENTRY VISA OR OTHER DOCUMENT AUTHORIZING ENTRY INTO BULGARIA SHALL, DURING THE PERIOD FOR WHICH HE HAS RECEIVED TEMPORARY VISITOR STATUS IN ACCORDANCE WITH THE VALID VISA OR OTHER DOCUMENT BY AUTHORIZATION, BE ENTITLED TO THE CONSULAR PROTECTION PROVIDED IN ARTICLE 38 OF THIS CONVENTION AS A UNITED STATES NATIONAL, AS WELL AS THE RIGHT TO LEAVE THE PEOPLE'S REPUBLIC OF BULGARIA WITHOUT FURTHER DOCUMENTATION REGARDLESS OF WHETHER SUCH PERSON ALSO POSSESSES BULGARIAN NATIONALITY."

3. THE INFERENCE APPARENTLY INTENDED IN THE BULGARIAN ARGUMENT THAT THE LATTER TEXT SUPERSEDES THE FORMER IS THAT THE UNITED STATES, HAVING ACKNOWLEDGED IN THE EXCHANGE OF LETTERS THE EXISTENCE OF DUAL NATIONALS IN 1974 CANNOT RELY ON THE EARLIER TREATY WHICH CONTAINS AN INCONSISTENT OR INCOMPATIBLE PROVISION FOR THE AUTOMATIC LOSS OF THE ORIGINAL NATIONALITY OF A BULGARIAN NATIONALS ONCE HE BECOMES A NATIONALIZED AMERICAN.

4. THE 1923 NATURALIZATION TREATY AS REAFFIRMED IN 1948 REMAINS IN EFFECT AND AUTOMATICALLY REMOVES BULGARIAN NATIONALITY FROM BULGARIANS WHO GO THROUGH THE NATURALIZATION PROCESS OF BECOMING AMERICAN CITIZENS. NATURALIZED AMERICAN CITIZENS CONSTITUTE BUT ONE CATEGORY WITHIN THE TOTAL COMPOSITION OF DUAL NATIONALS. THE U.S.-BULGARIAN NATURALIZATION TREATY SIMPLY REMOVES

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FROM THE CATEGORY OF DUAL NATIONALS THOSE BULGARIANS WHO HAVE BECOME NATURALIZED AMERICAN CITIZENS. THERE STILL REMAINS THE POSSIBILITY OF DUAL NATIONALS OF BULGARIA AND THE UNITED STATES. CHILDREN BORN IN THE UNITED STATES OF A BULGARIAN PARENT, OR CHILDREN BORN IN BULGARIA OF AMERICAN PARENTS ARE DUAL NATIONALS. THE 1974 EXCHANGE OF LETTERS SIMPLY ASSURES THAT SUCH DUAL NATIONALS WILL BE ACCORDED THE CONSULAR PROTECTION PROVIDED FOR IN THE CONSULAR CONVENTION AND THAT THEY REMAIN FREE TO LEAVE BULGARIA FORMER BULGARIAN CITIZENS WHO HAVE BECOME NATURALIZED AMERICANS ARE ENTITLED TO BE REGARDED AS ONLY AMERICANS UNDER THE 1923 NATURALIZATION TREATY; THEREFORE, THEY SHOULD NOT BE CHARACTERIZED AS -DUAL NATIONALS" FOR PURPOSES OF APPLICATION OF THE 1974 EXCHANGE OF LETTERS. (BEGIN FYI: ALTHOUGH IT WAS ANTICIPATED AT THE TIME OF THE NEGOTIATION OF THE CONSULAR CONVENTION THAT THE EXCHANGE OF LETTERS WOULD NOT HAVE TO BE UTILIZED FOR PURPOSES OF INSURING CONSULAR PROTECTION FOR THIS CATEGORY OF PERSONS, IT WOULD NEVER-

THELESS BE APPLICABLE TO THEM SHOULD THE 1923 AGREEMENT BE CONSTRUCTED AS NOT APPLICABLE TO SUCH PERSONS UNDER PARTICULAR CIRCUMSTANCES. OF COURSE, IF THE 1923

AGREEMENT WERE TERMINATED, THEN THE EXCHANGE OF LETTERS WOULD BE APPLICABLE TO FORMER BULGARIAN CITIZENS, EVEN THOSE PROPERLY NATURALIZED UNDER U.S. LAW. EXPERIENCE PRIOR TO THE 1974 EXCHANGE OF LETTERS LED THE DEPARTMENT TO CONCLUDE THAT EXTRA SAFEGUARDS WERE NECESSARY EVEN UNDER CIRCUMSTANCES WHERE IT APPEARED THAT NATIONALITY WAS NOT IN DOUBT. END FYI)

5. IN VIEW OF THESE DISTINCTIONS, THE PROVISIONS OF THE NATURALIZATION TREATY AND THE EXCHANGE OF LETTERS ARE NEITHER INCOMPATIBLE NOR INCONSISTENT. WHETHER READ TOGETHER OR APART, FULL CONSULAR PROTECTION IS ASSURED TO THOSE AMERICAN NATIONALS WHO BY BIRTH MAY ALSO BE CONFIDENTIAL

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NATIONALS OF BULGARIA. WITHOUT THE EXCHANGE OF LETTERS, FULL CONSULAR PROTECTION WOULD BE ACCORDED TO FORMER BULGARIANS WHO RE-ENTER BULGARIA AFTER BECOMING NATURALIZED AMERICANS BECAUSE THEY ARE AMERICAN CITIZENS ONLY, NOT DUAL NATIONALS.

6. THE BULGARIAN ARGUMENT THAT THE SUBSEQUENT EXCHANGE OF LETTERS SUPERSEDES THE EARLIER TREATY IS LEGALLY UNSOUND ON STILL ANOTHER GROUND.

ARTICLE 59 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES PROVIDES THAT "A TREATY SHALL BE CONSIDERED AS TERMINATED IF ALL THE PARTIES TO IT CONCLUDE A LATER TREATY RELATING TO THE SAME SUBJECT-MATTER..." THE CRITERIA FOR ARGUING THE INVALIDITY OF AN EARLIER TREATY BECAUSE OF SUPERSESSION IS AT THE MINIMUM THAT BOTH TREATIES RELATE TO THE SAME SUBJECT-MATTER.

THE 1923 NATURALIZATION TREATY RELATES TO THE STATUS OF PERSONS WHO AS FORMER NATIONALS OF BOTH COUNTRIES, HAVE BECOME NATURALIZED CITIZENS OF ONE OF THE COUNTRIES. THE 1974 EXCHANGE OF LETTERS RELATES TO THE EXTENSION OF CONSULAR PROTECTION TO DUAL NATIONALS. SINCE THE SUBJECT-MATTER OF THESE TWO TREATIES IS DISTINCT AND SEPARATE, NO QUESTION OF SUPERSESSION, AND THUS OF THE CONSEQUENTIAL INVALIDITY OF THE FORMER TREATY, CAN ARISE.

7. IN LIGHT OF THE ABOVE, IT IS OUR CONCLUSION THAT THE 1923 TREATY AND THE 1974 EXCHANGE OF LETTERS ARE FULLY COMPATIBLE AND CONSISTENT, AND THAT EACH STANDS ALONE AS FULLY VALID AND IN FORCE. END TEXT

8. DEPARTMENT BELIEVES THAT THIS ANSWERS EMBASSY'S QUESTIONS PARA 3 AND PARA 5 REFTEL. AS NECESSARY, EMBASSY IS AUTHORIZED TO UTILIZE ALL OR PART OF THIS MESSAGE IN DISCUSSIONS WITH GOB IN THE FUTURE. IF USE-CONFIDENTIAL

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FUL, EMBASSY MAY GIVE BULGARIANS TEXT OF REPORT FROM LEGAL ADVISOR'S OFFICE.

9. RE: EMBASSY'S QUESTION IN PARA 6 REFTEL: DURING THE NEGOTIATION OF THE DUAL NATIONALS EXCHANGE OF LETTERS, NO SPECIFIC IDENTIFICATION WAS MADE OF THE KINDS OF JUDICIAL OR ADMINISTRATIVE PROCESSES WHICH WOULD MANDATE AN EXTENSION OF THE RIGHT OF CONSULAR ACCESS TO DUAL NATIONALS. FROM THE U.S. POINT OF VIEW, IT WAS ANTICIPATED THAT ANY FORM OF LEGAL RESTRAINT WHICH WOULD PROHIBIT AN INDIVIDUAL FROM LEAVING THE COUNTRY ON HIS OWN ACCORD WOULD QUALIFY FOR APPLICATION OF THIS PARTICULAR PROVISION. FOR EXAMPLE, A "HOUSE ARREST" ORDERED ADMINISTRATIVELY, BUT NOT SUBJECT TO OFFICIAL LEGAL DETERMINATION, WOULD FALL INTO THIS CATEGORY OF RESTRAINT AND WOULD SERVE AS THE BASIS FOR EXTENSION OF THE PERIOD IN WHICH CONSULAR ACCESS IS ASSURED.

10. AS DEPARTMENT HAS PREVIOUSLY STATED, WE AGREE WITH EMBASSY THAT WE SHOULD NOT ALLOW OUR DISCUSSIONS RE MAREV, AND OTHER DIVIDED FAMILY CASES, TO BECOME EMBROILED IN LEGAL ARGUMENTS. NEVERTHELESS, EMBASSY SHOULD TAKE APPROPRIATE OPPORTUNITY AT OCCASSION OTHER THAN DISCUSSION OF MAREVS, TO INFORM GOB OF OUR VIEWS ON THE INVALIDITY OF THEIR POSITION ON THIS QUESTION.
CHRISTOPHER

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Message Attributes

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